

# CLIENT ALERTS

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## Employee Benefits – U.S. Department of Labor Issues Guidance Regarding Same-Sex Marriage for Employee Benefit Plans

9.20.2013

In this issue:

*U.S. Department of Labor Issues Guidance Regarding Same-Sex Marriage for Employee Benefit Plans*

In our June 26, 2013, Client Alert, we informed you that the United States Supreme Court ruled that Section 3 of the Defense of Marriage Act ("DOMA") is unconstitutional.

Section 3 of DOMA had defined "marriage" for purposes of all federal laws as a legal union between one man and one woman as husband and wife, and it defined "spouse" as a person of the opposite sex who is a husband or wife. By ruling Section 3 of DOMA as unconstitutional, the definitions of "spouse" and "marriage" under state law became applicable. In essence, the court decision meant that federal benefits and protections provided to opposite-sex spouses apply to same-sex spouses if same sex marriage is recognized under applicable state law. If applicable state law defines spouse as including a member of the same sex, then provisions in employee benefit plans pertaining to a spouse includes an employee's same-sex spouse.

One major question following the U.S. Supreme Court's decision became which state's law applies in defining "spouse": the law of the state where the couple resides – or the law of the state where the couple married?

In our August 30, 2013, Client Alert, we informed you that the Internal Revenue Service ("IRS") issued guidance indicating that for federal tax purposes the IRS will recognize a marriage of same-sex individuals validly entered into in a state whose laws authorize the marriage of two individuals of the same sex – even if the state in which they are domiciled does not recognize the validity of same-sex marriages. The IRS specifically noted that

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this rule applies for purposes of employee benefit plans employers offer to employees.

To view the complete publication, click the link under Related Files.